

1988

Nicaragua: United States Assistance to the Nicaraguan Human Rights Association and the Nicaraguan Resistance

Suzanne B. Goldberg
Columbia Law School, sgoldb1@law.columbia.edu

Lee Crawford

Kevin Reed

John Tennant

Follow this and additional works at: https://scholarship.law.columbia.edu/faculty_scholarship



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Suzanne B. Goldberg, Lee Crawford, Kevin Reed & John Tennant, *Nicaragua: United States Assistance to the Nicaraguan Human Rights Association and the Nicaraguan Resistance*, 1 HARV. HUM. RTS. YB. 260 (1988).

Available at: https://scholarship.law.columbia.edu/faculty_scholarship/1109

This Article is brought to you for free and open access by the Faculty Publications at Scholarship Archive. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarship Archive. For more information, please contact scholarshiparchive@law.columbia.edu.

NICARAGUA: *United States Assistance to the Nicaraguan Human Rights Association and the Nicaraguan Resistance*

The question of providing aid to the Nicaraguan Resistance has been significant to United States human rights policy throughout the Reagan Administration. Although events have changed repeatedly during the winter of 1988, including a truce between the Nicaraguan Government and the Resistance and a Congressional decision not to provide military aid to the Resistance, the underlying policy issues remain constant. The *Harvard Human Rights Yearbook* presents two notes, *infra*, discussing the Military Construction Appropriations Act of 1987, which granted \$100 million in aid to the Nicaraguan Resistance. The first note discusses the Nicaraguan Human Rights Association (*Asociación Nicaraguense Pro-Derechos Humanos "ANPDH"*), a human rights organization sponsored and funded by the United States. The second note discusses the content, legislative history and human rights concerns of the 1987 Appropriations Act.

I.

A notable result of the 1987 Military Construction Appropriations Act's grant of aid to the Nicaraguan Resistance is the creation of a new United States-sponsored human rights organization, the Nicaraguan Human Rights Association (*Asociación Nicaraguense Pro-Derechos Humanos: "ANPDH"*). Funded by \$2.5 million of the \$3 million earmarked in section 208 of the Act "for strengthening programs and activities of the Nicaraguan Democratic Resistance for the observance and advancement of human rights,"¹ the group began work in October 1986 independent of other local and international human rights monitoring organizations. Its primary objectives, as developed by the United States Department of State, are the prevention and investigation of human rights abuses by the Nicaraguan Resistance as well as gathering information on Sandinista abuses.² Its goal generally is "the defense of human rights under international law, within the context

1. Military Appropriations Construction Act of 1987, PUB. L. NO. 99-591 § 208, 100 Stat. 3341 (1986) [hereinafter *Military Construction Act*]; see also NICARAGUAN HUMAN RIGHTS ASSOCIATION (ANPDH), SECOND SIX-MONTH REPORT ON HUMAN RIGHTS PRACTICES BY THE NICARAGUAN RESISTANCE 31 (1988) (explaining the ANPDH's funding) [hereinafter *SECOND REPORT*].

2. U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1986, at 584 (1987) [hereinafter *1986 COUNTRY REPORTS*]. The ANPDH is also responsible for a "comprehensive human rights instruction program for resistance combatants." *Id.* In addition, the State Department report states that the ANPDH staff has visited prisoners of the Democratic National Front ("FDN") and are "actively seeking an international organization to assist in returning them to Nicaragua or to other nations willing to accept them." *Id.* *Country Reports* refers to the ANPDH as the Nicaraguan Association for Human Rights ("NAHR")

of the continuing conflict between the Sandinista government of Nicaragua and the Nicaraguan Resistance."³ Incorporated in Costa Rica, the ANPDH has offices in Honduras and a representative in Washington, D.C. Its trained observers follow the resistance forces with varying degrees of success on the Atlantic, Southern and Northern fronts of Nicaragua.

The development of the ANPDH reflects the increased concern of United States legislators over funding the Nicaraguan armed resistance in light of human rights abuses reported by American journalists and national and international monitoring organizations.⁴ President Reagan's 1986 request for Contra aid highlighted the \$3 million specified for human rights funding as reflecting the "determination that human rights must be respected." The President optimistically predicted "significant positive results" from human rights training and assistance.⁵ However, Elliot Abrams, Assistant Secretary of State for Inter-American Affairs, acknowledged congressional concerns about Contra human rights abuses when discussing the human rights funding: "There is no question that there have been human rights violations by the resistance forces. It is a guerrilla army, and that is a difficult situation in which to discipline troops."⁶

The ANPDH's predecessor, the United Nicaraguan Opposition's Human Rights Commission ("UNO/CDH"), was also created to investigate charges of human rights abuses by the resistance forces. During operations from December 1985 to July 1986, the UNO/CDH's objective, as designated by the State Department and the President, was to defend and promote human rights, particularly in situations of armed conflict.⁷ During its existence, the Costa Rica-based organization spent \$175,000 of United States funds and rec-

3. NICARAGUAN HUMAN RIGHTS ASSOCIATION (ANPDH), SIX-MONTH REPORT ON HUMAN RIGHTS IN THE NICARAGUAN RESISTANCE 3 (July 1987) [hereinafter FIRST REPORT].

4. See generally AMERICAS WATCH, HUMAN RIGHTS IN NICARAGUA 1986 (1987) [hereinafter AMERICAS WATCH 1986]; AMNESTY INTERNATIONAL, REPORT 1986 (1987) [hereinafter AMNESTY 1986]; LAWYERS COMMITTEE FOR HUMAN RIGHTS, HUMAN RIGHTS IN NICARAGUA: 1987 (1987) [hereinafter LAWYERS COMM. 1987].

5. See *Assistance for Nicaraguan Democratic Resistance: Hearings before a Subcomm. of the House Comm. on Appropriations*, 99th Cong., 2nd Sess. at 288 (1986) (press release of President Reagan).

6. *U.S. Policy Toward Nicaragua: Aid to Nicaraguan Resistance Proposal: Hearings before the Senate Comm. on Foreign Relations*, 99th Cong., 2nd Sess. (1986) (statement of Elliot Abrams, Assistant Secretary of State for Inter-American Affairs). Even with the allocation of human rights funding, the Contra aid bill barely passed the Senate Appropriations Committee in August 1986, by a 15-14 vote. *N.Y. Times*, Aug. 6, 1986, at A4, col. 4.

7. Directed by Arturo Cruz, one of the UNO's principal leaders at that time, with assistance from Ismael Reyes, the former head of the Nicaraguan Red Cross, the UNO/CDH's tasks included training UNO forces in a code of conduct, investigating and monitoring punishment of derelictions and monitoring and exposition of Sandinista human rights violations. See *Assistance for Nicaraguan Democratic Resistance. Hearings before a Subcomm. of the House Comm. on Appropriations*, 99th Cong. 2nd Sess. 323 (1986).

ommended twenty-one prosecutions. Only one of the nineteen cases resulting in convictions reported in the 1985 State Department *Country Reports* involved violence against Nicaraguan civilians. The remainder concerned either common crimes or abuses against other Contras.⁸

The same obstacles that blocked access by the UNO/CDH to key individuals and information regarding human rights in Nicaragua also hamper the ANPDH. In reporting on the office's closure, the State Department indicated that the UNO/CDH was unable to gain access to evidence, witnesses and sites of alleged abuses, and therefore failed to establish an objective basis for confirming or rebutting the charges disseminated by the Nicaraguan government.⁹ Although the ANPDH initially reported that the armed resistance was receptive to its inquiries and programs,¹⁰ it later faced the same tensions with Contra commanders as did the UNO/CDH.¹¹ The trend toward conflict has reversed somewhat with structured talks between the ANPDH and resistance leaders and organizational changes in the military prosecutor's office, but the underlying problems of securing witnesses and access to sites remain.¹²

Unlike the UNO/CDH, the ANPDH is meant to be separate and independent from the political and military components of the Resistance.¹³ ANPDH's director, Marta Patricia Baltodano, formerly di-

8. See AMERICAS WATCH 1986, *supra* note 4, at 50. According to Americas Watch, its "flawed performance made UNO/CDH something of an embarrassment." *Id.* at 146.

9. See 1986 COUNTRY REPORTS, *supra* note 2, at 584.

10. *Id.*

11. See N.Y. Times, June 2, 1987, at A16, col. 1. The article reported that according to senior rebel officials and diplomats, Contra military commanders had blocked human rights monitors from visiting prisoners in rebel jails. *Id.* Just one month earlier, Assistant Secretary Abrams asserted that the ANPDH and other efforts "have made clear beyond doubt the democratic commitment of the Nicaraguan resistance." Abrams, *Development of U.S.-Nicaragua Policy*, DEP'T ST. BULL., May 1987, at 78. A March 1987 House Report on Nicaragua explained that with regard to human rights, the Nicaraguan resistance continues to be "tarred with a poor image, arising in part from Sandinista efforts to discredit it falsely." The report goes on to state that the resistance has demonstrated its willingness to assist NAHR investigations. J.E. FOX, FURTHER ASSISTANCE TO NICARAGUAN DEMOCRATIC RESISTANCE, H.R. DOC. NO. 100, 100th Cong., 1st Sess. 8 (1987) [hereinafter HOUSE REPORT].

12. SECOND REPORT, *supra* note 1, at 3, 5-6.

13. The House Report on Nicaragua, pursuant to Sections 211(e) and 214 of the Military Construction Act of 1987, *supra* note 1, details the status of negotiations between the Nicaraguan democratic resistance and the Nicaraguan government and evaluates the human rights situation there. The House Report identifies the efforts of the ANPDH (referred to there as the NAHR), noting that the organization is non-profit and "separate and independent from any of the resistance's political or military components." HOUSE REPORT, *supra* note 11, at 9. The Americas Watch report *Human Rights in Nicaragua 1986* indicates a conflict of views on the distinct nature of the ANPDH. Contrary to ANPDH leaders' assertions of their independence from UNO, a State Department official in comments to Americas Watch in September 1986 "took it as a given that the new office would be established precisely as a successor to UNO/CDH." AMERICAS WATCH 1986, *supra* note 4, at 51.

rected the Nicaraguan Permanent Commission on Human Rights ("CPDH").¹⁴ Two staff members, however, were with UNO/CDH.¹⁵

The ANPDH functions primarily to provide human rights training, investigate abuses and serve as a liaison with international organizations. Since its creation, it has issued two *Six-Month Reports* discussing the group's findings in many areas: training programs, methodology, the association's limitations, individual case investigations, the resistance code of conduct, military prosecution in the Resistance, treatment of prisoners and allegations of Sandinista human rights violations.¹⁶ Conclusions to the reports recognize both significant achievements in human rights training efforts and disappointment with the slow progress to establish an effective military prosecuting mechanism. The second report recognizes that "the Association's goals are still beyond the steps that [it has] been able to achieve." More positively, it notes that "corrective structures have begun to impede a pattern of mistreatment and abuse."¹⁷

The ANPDH highlights training as a major accomplishment, yet concludes that lack of training and proper military discipline is the root of many of the Resistance's human rights problems. As of January 1988, the Association had trained more than 1,875 individuals, about ten percent of the force, in over thirty-three courses and seminars for commanders, troops and observers. Trainees are instructed in registering allegations, conducting investigations and motivating their companions to respect human rights.¹⁸ Courses focus on the protection of the civilian population, treatment of wounded, protection of the Red Cross and its units, prohibitions against torture, limiting indiscriminate use of weapons and eliminating the forceful recruitment of civilians.¹⁹ The observers, who are encouraged to teach human rights

14. The Nicaraguan Permanent Commission on Human Rights ("CPDH"), founded in 1977, is a non-governmental organization not affiliated with any political party or religious group. It collects and disseminates data on human rights abuses filed in formal complaints at its office and has disseminated reports of its findings. U.S DEPARTMENT OF STATE, HUMAN RIGHTS IN NICARAGUA UNDER THE SANDINISTAS 3, 5 (Dec. 1986).

15. FIRST REPORT, *supra* note 3, at 4.

16. *Id.* at 6.

17. SECOND REPORT, *supra* note 1, at 29-30. The FIRST REPORT states that: [M]any of the Nicaraguan Resistance's human rights problems stem from a singular lack of training and proper military discipline. Although it is too early to tell, the Association believes there is already an indication that human rights violations on the part of the Nicaraguan Resistance may be on the decline. But if that is true, it can only continue as long as the Nicaraguan Resistance takes serious steps to establish a more effective military prosecuting mechanism. So far, progress has been slow.

FIRST REPORT, *supra* note 3, at 28.

18. SECOND REPORT, *supra* note 1, at 4.

19. *Id.*, FIRST REPORT, *supra* note 3, at 4. All observer/activists and combatants are given material including the "Combatant's Manual, Rules Concerning the Treatment of the Civilian Popu-

in their daily contact with combatants, receive intensive refresher courses "so they can continue to integrate the responsibilities of combat with those of being members of a human rights working group."²⁰

The Code of Conduct, with which resistance fighters and observers are trained, has undergone substantial revisions since the Nicaraguan Democratic Force ("FDN") first published the *Blue & White Book*, the first version of the military code of conduct, in 1982. In December 1987, the resistance directorate officially promulgated a new, more simply written code, following a conference with participation from several FDN commanders, including General Commander Enrique Bermudez.²¹

Both reports recognize basic limitations which persist in the Association's training and investigatory efforts. First, the Sandinista government's refusal to grant permission to conduct investigations inside Nicaragua hampers ANPDH fact-finding efforts by limiting access to witnesses and sites of abuses.²² Second, relatively low education levels of combatants make the training process more difficult and less effective. Although "most of the combatants express strong support for human rights concepts, they need recurrent instruction to convert such feelings into useful habit patterns that will serve them in combat," according to the first report.²³ Third, lack of cooperation by resistance commanders interferes with the ANPDH's work. The initial cooperation between the FDN and the ANPDH wore thin within a few months, resulting in the temporary eviction of ANPDH staff from the *Contras'* northern front headquarters.²⁴ While the ANPDH returned to the front, frictions remain, stemming from regional commanders' fears that observers threaten their power and might also uncover evidence of pre-ANPDH abuses denied by the Resistance.²⁵

lation, the military *Code of Conduct*, and a summary of the Geneva Conventions and applicable protocols." SECOND REPORT, *supra* note 3, at 4. The first report notes that a radio version of the combatant's manual was prepared for broadcast from rebel stations. That report highlights the ANPDH's "special attention" to training ethnic groups, including Miskitos and Creoles, represented in the resistance, FIRST REPORT, *supra* note 3, at 4.

20. SECOND REPORT, *supra* note 1, at 4.

21. *Id.* at 25.

22. *Id.* at 5; FIRST REPORT, *supra* note 3, at 5.

23. *Id.* at 5.

24. *Id.* ANPDH staff was ordered to leave by the *Contras'* chief military commander Enrique Bermudez on May 14, 1986. The commanders charged that the human rights monitors, who are mainly civilians, "interfered with the military chain of command" in investigating abuses, according to two senior rebel officials quoted in the *New York Times*. *N.Y. Times*, June 2, 1987, at A16, col. 2. See also *supra* note 11 and accompanying text.

25. The first Report states the Association's belief that part of the crisis stemmed from the ANPDH's decision to investigate violations which occurred several years ago. The Resistance also initially objected to the presence of civilian observers, claiming the observers interfered with combat operations. However, the Report also notes that the Nicaraguan Resistance "is probably the only revolutionary movement that allows human rights monitors within its ranks—

The *Second Six-Month Report* notes, however, that the friction between the Contras and the ANPDH has "substantially diminished with the creation of the legal counsel, which also functions as a liaison between the ANPDH and the resistance leadership."²⁶ Finally, the constantly changing position of resistance bases and corresponding difficulties in transportation to those areas have impeded the location of observers and witnesses among the decentralized forces.²⁷

Despite its acknowledged limitations, the ANPDH includes in its first report twelve investigations with findings varying in completion, eight other specific cases under investigation and two general areas of concern: misconduct outside Nicaraguan territory and indiscriminate land mine use.²⁸ Allegations include murders, forced recruitments, kidnappings, arson and rape.²⁹ The ANPDH referred four cases to prosecutors for further investigation and action, stating that several other investigations are incomplete, pending additional testimony. In kidnapping cases the ANPDH requested FDN officials to free the captives. One of the twelve investigations led to sexual abuse charges brought by the ANPDH against Comandante Mike Sierra, chief of staff of KISAN, the Miskito Indian/Creole alliance. However, the findings report that, "inexplicably," Sierra was released before having been tried.³⁰

The second report follows up on seventeen previous cases. Only one fully satisfies the ANPDH's criteria for a complete investigation. Reports on the other sixteen cases are partial at best, with problems ranging from incomplete investigations due to the inaccessibility of witnesses, evidence and sites to short sentencing to sentences not being served by guilty parties. The ANPDH also notes a lack of responsiveness by and negligent handling of cases by KISAN and YATAMA (Children of the Motherland of the Atlantic Coast, an indigenous people's alliance).³¹ Significantly, in six of the investigated cases, the ANPDH reports the sentencing of convicted human rights violators.³²

The second report describes the six investigations conducted by the ANPDH in the past six months. Five investigations were resolved satisfactorily.³³ One, in which an alleged Sandinista informer was

for ideological reasons identified with its democratic principles and objectives, and because of the source of the funds for resistance operations." FIRST REPORT, *supra* note 3, at 5.

26. SECOND REPORT, *supra* note 1, at 3.

27. *Id.* at 6.

28. FIRST REPORT, *supra* note 3, at 24-25.

29. *Id.* at 7-22.

30. *Id.* As of January 1988, Sierra remains an active Comandante and faces no charges.

SECOND REPORT, *supra* note 1, at 14.

31. SECOND REPORT, *supra* note 1, at 8-18.

32. *Id.* at 8-20.

33. *Id.* at 18-20.

executed following a military trial at the Southern Front, the Association held to be a violation of the humanitarian law of war; as such it should be the subject of a trial.³⁴

The twenty-two other cases listed in the second report as new allegations of human rights abuses committed by the Contras have not yet been fully investigated. The ANPDH is investigating attacks on cooperatives, attacks against civilians and the indiscriminate use of arms against the civilian population.³⁵ The ANPDH condemns government placement of military structures within rural cooperatives because such locations "compe[l] displaced peasants to become involved in military activities"³⁶

Both ANPDH reports include suggestions to increase the Resistance's respect for human rights. The first report recommends that the National Resistance leadership take "serious steps to establish a more effective military prosecuting mechanism."³⁷ The ANPDH's examination of *fisicalia* (the military prosecutors office) uncovered malfunctions in the structure of prosecutions of Code of Conduct violations by resistance members. In July 1987, the Resistance reorganized the *fisicalia* following the structure of the Northern Front legal counsel which oversees the *fisicalia*. The office has two lawyers, one which serves as a prosecutor before the military tribunals and the other as a defense counsel. Upon receiving an allegation of a human rights abuse, the Northern Front Commander orders a preliminary investigation with the legal counsel which determines whether to bring the accused to trial. The Northern Front Commander then forms a military tribunal with three regional, task force or group commanders. The accused is suspended and arrested if necessary once the trial begins. Prosecuting and defense lawyers are present from the initial stages. Following a thirty day proof-gathering period, the prosecutor and defense attorney present final arguments and the tribunal issues a judgment and sentence according to the guidelines in the *Code of Conduct*.³⁸

The Atlantic and Southern Fronts still have an "urgent" need for an operating military prosecutor's office, according to the second report.³⁹ The YATAMA group, which includes the former KISAN front, has committed several grave and unpunished violations in the area. The disciplinary system utilized in the two fronts corresponds neither to the *Code of Conduct* nor many accepted legal principles.⁴⁰

34. *Id.* at 21.

35. *Id.* at 21.

36. *Id.* at 22.

37. FIRST REPORT, *supra* note 3, at 28.

38. SECOND REPORT, *supra* note 1, at 6-7.

39. *Id.* at 6

40. *Id.*

Regarding prisoners, the number of Sandinistas captured by the Northern Front jumped from seventy-two in July 1987 up to 131 in that September and down to sixty-two in January 1988. The ANPDH reported its protest to the resistance directorate regarding cramped jail conditions at an old Northern Front strategic command base. It continues to investigate reports of physical threats and alleged participation of resistance intelligence personnel and military police in torture during interrogations. The Association's efforts in these areas and in seeing prisoners not registered on any official list but generally known to be held by the Resistance "have met with little success."⁴¹ The second report notes that the military police it has seen treat prisoners reasonably well but that medical care is neither sufficient nor timely.⁴²

The ANPDH has become involved with Nicaraguan refugees in Honduras and Costa Rica by volunteering to serve as an intermediary in talks between Nicaraguan refugees, the UN High Commission for Refugees ("UNHCR"), the International Red Cross and civil and military authorities.⁴³ The Association visits various refugee centers, monitors the condition of Nicaraguan refugees and supports compliance with the conventions of repatriation signed between the governments of Nicaragua, Costa Rica and Honduras and the UNHCR.⁴⁴

Several non-governmental human rights organizations, including the Lawyers Committee for Human Rights and Americas Watch, criticize the ANPDH's effectiveness as a human rights investigatory and training operation.⁴⁵ Americas Watch cites its disappointment with ANPDH investigations specifically following its own investigation of allegations of murder of civilians by resistance forces, including children, in the Nicaraguan town of El Nispero.⁴⁶ The Lawyers Committee on Human Rights report, *Human Rights in Nicaragua: 1987*, similarly criticizes the ANPDH's accomplishments in investigating and reforming human rights abuses in Nicaragua.⁴⁷ The Lawyers

41. *Id.* at 50.

42. *Id.* at 26.

43. *Id.* at 27.

44. *Id.* at 29.

45. See generally *LAWYERS COMM. 1987*, *supra* note 4; *AMERICAS WATCH 1986*, *supra* note 4.

46. Only after Americas Watch wrote to Dr. Adolfo Calero with its contrary view of the facts and published a statement that the ANPDH investigation "yielded results which tend to rationalize Contra behavior—and deny abuses—rather than to seek the perpetrators of the murders and kidnappings," *AMERICAS WATCH 1986*, *supra* note 4, at 53, did the ANPDH publish an acknowledgment of these inaccuracies. *FIRST REPORT*, *supra* note 3, at 16. As of the July 1987 report, its investigation of the November 1986 El Nispero attack remained incomplete.

47. With respect to the published case investigations, the report stated that the ANPDH had "barely scratched the surface of credible reports of Contra human rights abuses." *LAWYERS COMM. 1987*, *supra* note 4, at 36. Regarding the Contras internal justice system to which the ANPDH refers certain cases, the Lawyers Committee found no evidence that the system operates, despite the Contras public statements of its existence.

Committee doubts the impact of ANPDH training programs, concluding that "the ANPDH has even less to show for itself as a training unit than an investigatory body. Most of the incidents of Contra abuses uncovered in a week of travelling through conflicted areas occurred between May and July of this year (1987). Other incidents continue to be regularly reported in the press."⁴⁸

In contrast to criticisms by non-governmental organizations, the State Department lauds the ANPDH's accomplishments. Assistant Secretary Abrams cites the ANPDH and other Nicaraguan human rights initiatives as having "given the resistance the tools it needs to project its democratic message to Nicaragua and to the world."⁴⁹

In addition to restricted access to information, its role as an organization politically and legally necessary for continued aid to the Contras hampers the ANPDH's effectiveness. The fact that the ANPDH named only forty-five individual cases of Contra abuses in contrast to 122 cases of Sandinista abuses, when its primary objective is to monitor the Contras, may be partially explained by examining the ANPDH's role within the power dynamic of the President, Congress, the United States public and the Nicaraguan opposition. The ANPDH is a legally mandated component of the Administration's policy of continued Contra funding. In effect it is an organization funded by the United States to grant a human rights stamp of approval so that money can be supplied with a clear political conscience. It seems unlikely that such an organization could be effective. Because the United States administration has consistently demonstrated its willingness to supply the Contras, the ANPDH possesses little real power, like the capacity to make threats to withhold aid, with which to influence its intended audience. It could conceivably make a major commitment to investigate and publicize abuses in order to expand its influence over the Contras but it has not yet shown an ability or inclination in this area.

Even if the ANPDH were determined to pursue its mandate on a large scale, questions remain regarding the potential impact of human rights training of any group dedicated to guerilla warfare. The ANPDH's trainings may increase Contra awareness of human rights laws of warfare. However, the very nature of their efforts—teaching consciousness about human rights to cadres of guerillas—makes a high degree of success unlikely.

Furthermore, it is ironic that the ANPDH is instructing the Contras to comply with international guidelines for conducting guerilla warfare

48. *Id.* at 37.

49. DEP'T ST. BULL., *supra* note 11, at 781.

when the World Court held that support to the Contras constituted "a clear breach" of the principle of non-intervention.⁵⁰

Despite criticisms and its limitations, the ANPDH remains a critical component of United States policy in Nicaragua. For as long as Congress remains concerned about human rights violations by the Contras, the ANPDH or some similar organization will be politically necessary to justify continued funding to the Nicaraguan Resistance.

II.

The Military Construction Appropriations Act,⁵¹ enacted on October 30, 1986, as part of an Omnibus Appropriations Bill, includes among its many provisions authorization for the release of \$100 million in military and humanitarian aid to Nicaraguan opposition military and paramilitary forces known as Contras.⁵² The Act, for which President Reagan personally and persistently lobbied, has been described as a major victory for Reagan foreign policy objectives.⁵³

Title II of the Act provides funds for the Contras and authorizes the release of Defense Department funds for assistance to "the Central American democracies."⁵⁴ Section 206 of Title II, "Assistance for the Nicaraguan Democratic Resistance" begins the portion of the Act which authorizes aid to the Contras. Section 211(b)(1) provides that the aid may be used for

50. The World Court held that:

[T]he support given by the United States, up to the end of September, 1984, to the military and paramilitary activities of the Contras in Nicaragua, by financial support, training, supply of weapons, intelligence and logistic support constitutes a clear breach of the principle of non-intervention.

U.S. v. Nicaragua, 1986 I.C.J. 14 (June 27, 1986).

The Court also held that the United States had violated the customary international law prohibition against the threat or use of force by directly attacking Nicaragua in several instances, and by arming and training the Contras. Rowles, *Nicaragua v. the United States: Issues of Law and Policy*, 20:4 INT'L LAW, 1274, 1276 (1986); citing U.S. v. Nicaragua, paras. 80, 227, 228, 239-42.

51. Military Construction Act, *supra* note 1.

52. The bill defines the Contras as "all groups . . . which are committed to work together for democratic national reconciliation in Nicaragua" but restricts funding to those groups that "respect international standards of conduct and refrain from violations of human rights or from other criminal acts." *Id.* § 204. The Contras include major forces such as the United Nicaraguan Opposition ("UNO") which represents the Nicaraguan Democratic Force, the Democratic Revolutionary Alliance, the Indian-Creole Alliance KISAN and "other democratic resistance elements." These include non-UNO aligned organizations such as the Southern Opposition Bloc and the Indian resistance force known as Misurasata.

53. See N.Y. Times, June 26, 1986, at A1, col. 5.

54. The term "Central American democracies" includes Costa Rica, El Salvador, Guatemala, and Honduras. Military Construction Act, *supra* note 1, § 205(a).

- (A) humanitarian assistance . . . ;
- (B) logistics advice and assistance;
- (C) support for democratic political and diplomatic activities;
- (D) training, services, equipment and supplies for radio communications, collection, and utilization of intelligence, logistics, and small-unit skills, tactics and operations; and
- (E) equipment and supplies necessary for defense against air attacks.⁵⁵

Title II authorizes the release to the Contras of \$100 million of Defense Department funds,⁵⁶ \$70 million for military aid and \$30 million for "humanitarian" aid.⁵⁷ Further provisions of Title II establish mechanisms for the accounting of Contra aid expenditures,⁵⁸ the creation of a Commission on Central American Negotiations,⁵⁹ and the requirement that the President report to Congress periodically on progress towards peace in Nicaragua.⁶⁰

55. *Id.* § 211(b)(1).

56. *Id.* § 206(a).

57. *Id.* § 208(a). Humanitarian assistance "means the provision of food, clothing, medicine, and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles, or material which can be used to inflict serious bodily harm or death." International Security and Development Cooperation Act of 1985, Pub. L. No. 99-83, 99 Stat. 190 (1985). The United States' concept of humanitarian assistance can be quite flexible. On June 21, 1986, the *New York Times* described alleged Contra "humanitarian" purchases of 62,120 belts, 6,000 pairs of suspenders, 53,576 pairs of boots, and 50,000 canteens—all for 15-20,000 Contras. *N.Y. Times*, June 21, 1986, at 1, col. 1. An editorial on September 13, 1986, criticized the State Department for denying Oxfam America permission to send agricultural equipment and supplies to Nicaragua. The *New York Times* alleged that the State Department rejected the shipment after determining that two chain saws, mimeograph machines and spare parts for farm equipment could be used for military purposes by the Sandinistas. *N.Y. Times*, Sept. 13, 1986 § 1 at 26, col. 1.

58. Military Construction Act, *supra* note 1, § 207.

59. *Id.* § 213. This section establishes a five-member bipartisan commission which is "to monitor and report on the efforts of the Nicaraguan democratic resistance to coordinate and reform and on the status of any negotiations on the peace, stability, and security of Central America." *Id.*

60. *Id.* § 211. This section provides that the President shall report to Congress before each of the last two installments of aid are released. The President is requested to comment on (1) the status of Nicaraguan peace negotiations; (2) the accountability of Contra expenditures; (3) violations of human rights by the Sandinistas and the Contras; and (4) efforts of the Contras to broaden their political base. Sections 203 and 216 of Title II prohibit American government personnel, including employees, agents and soldiers of the Armed forces and the CIA, from providing "any training or other service or otherwise participat[ing] directly or indirectly in the provision of any assistance to the Contras . . . within those land areas of Honduras and Costa Rica which are within 20 miles of the border with Nicaragua." *Id.* § 216. Section 216(b) exempts from this prohibition any United States officer, employee or agent in Nicaragua or within 20 miles of its border for the purpose of carrying out inspections, investigations or audits with respect to Contra aid. *Id.*

The push for the Act's passage began in early 1986.⁶¹ On March 21, however, the House voted 222-210 against the bill.⁶² On March 24, 1986, Administration officials reported that 1,500 Nicaraguan troops had entered Honduran territory. Honduran officials initially denied reports of the incursion, much as they had denied or downplayed the more than 100 cross-border attacks by Contra and Sandinista forces over the previous few years.⁶³ Later, however, Honduras confirmed the invasion.⁶⁴ Opponents accused the Reagan Administration of politically manipulating a normal incident between Nicaragua and Honduras.⁶⁵ Nevertheless, conservatives seized upon the incursion as proof that the President was correct.⁶⁶

Although the alleged Nicaraguan incursion into Honduras may have precipitated the Senate's approval of the bill, the Senate debate also focused on the role of negotiation, specifically the merits of the Contadora process, in resolving the conflict in Nicaragua. Those who opposed passage of the bill supported the Contadora process as an alternative to military action.⁶⁷ After President Reagan agreed to withhold aid while the United States attempted to initiate negotiations between the Contras and the Sandinistas,⁶⁸ Congress approved the bill.

The issue of human rights and of the moral and legal responsibility of support to the Contras occupied a crucial place in congressional consideration of the aid bill. The Senate and House heard Reagan Administration officials and leaders of human rights organizations

61. See Hardt, *The Reagan Administration's Battle for Contra Aid*, 10 *THE FLETCHER FORUM* 291 (1986). The Administration suggested, in a manner reminiscent of McCarthy red scare tactics, that voting against the aid bill would be caving into communism. See Buchanan, *The Contras Need Our Help*, Wash. Post, Mar. 5, 1986, at A19. ("With the vote on Contra aid, the Democratic Party will reveal whether it stands with Ronald Reagan and the resistance—or Daniel Ortega and the communists.")

62. 32 CONG. REC. D316 (daily ed. Mar. 21, 1986).

63. See Smolowe, *Pouncing on a Transgressor*, TIME, Apr. 7, 1986, at 24.

64. See Martz, *Echoes of an Old War*, NEWSWEEK, Apr. 7, 1986, at 34.

65. See *This Week With David Brinkley*, (ABC television broadcast, Mar. 30, 1986) Sen. Jim Sasser (D-Tenn.): "[C]ynics would say that this is an effort on the part of the Administration to gin up support for their effort to get \$100 million in Contra aid." ABC News White House Correspondent Sam Donaldson: "Is that what you say?" Sen. Sasser: "I suspect that's the case.")

66. See N.Y. Times, Mar. 26, 1986, at A6, col. 1. As a result of the alleged incursion, the Democrats lost much of their unity in opposing Contra aid. See Wash. Post, Mar. 26, 1986, at A12.

67. See 132 CONG. REC. S3,456-7 (daily ed. Mar. 26, 1986) (statement of Sen. Kennedy). Sen. Edward Kennedy (D-Mass.) said the United States should follow the Contadora nations' repeated call to end support for the Contras and for a negotiated solution, for while "[t]he Contras will never topple the Sandinistas . . . the people of Nicaragua—the true democratic opposition—just might."

68. See Hardt, *supra* note 61, at 292. Talks between Managua and Washington would be held only after Managua began negotiations with the Contras. The final assessment of the diplomatic mission's success and the power to release the remaining military aid, however, lay with the President rather than with the Congress.

testify about abuses on both sides of the Nicaraguan conflict. Congressional reaction to reports of human rights abuses appear throughout the Act, and a significant three percent of the \$100 million granted to the Contras is earmarked for human rights work.⁶⁹

The Administration asserted that its position on human rights was in part the impetus behind the request for Contra aid. In its presentations to the Senate and House, the Administration focused on human rights abuses by the Nicaraguan government, specifically the relocation of the Miskito Indians, the harassment of the Roman Catholic Church, censorship of the media, and restrictions on civil rights and liberties established under the State of Emergency.⁷⁰

Richard Shifter, Assistant Secretary of State for Human Rights and Humanitarian Affairs, characterized the Administration's stance towards human rights as one which opposes specific human rights violations wherever they occur and at the same time works in the long term to strengthen democracy in order to ensure human rights.⁷¹ One commentator described President Reagan's human rights policy as an "assertive campaign on behalf of democratic values . . . conceived as a deliberate shift away from the Carter emphasis on torture, disappearances and absence of due process . . ."⁷²

The Act seeks to promote human rights in Nicaragua in the form of democratic institutions. For example, section 203(a)(4) declares that United States policy towards Nicaragua is to be based upon, among other things, Sandinistan progress towards alleviation of "internal repression and lack of opportunity for the exercise of civil and political rights which would allow the people of Nicaragua to have a meaningful voice . . . through participation in regularly scheduled free and fair elections and the establishment of democratic institutions."⁷³

Much congressional testimony reflected the Reagan emphasis on civil and political rights. Witnesses testified to the resettlement of the Atlantic Coast Miskito Indians to Sandinista-controlled camps,⁷⁴ the harassment of the Catholic Church,⁷⁵ the Sandinistan prohibition of broadcasts of masses, the shutdown of the Church's radio station, the Church's criticism of the sectarian nature of the Sandinista

69. See Military Construction Act, *supra* note 1, § 208(b). See also *supra* Part I, discussing the ANPDH.

70. See generally 1986 COUNTRY REPORTS, *supra* note 2, at 569.

71. See *id.* at 3.

72. Jacoby, *The Reagan Turnaround on Human Rights*, 64 FOREIGN AFF. 1066, 1075 (1986).

73. Military Construction Act, *supra* note 1, § 203.

74. See *Review of President's Report on Assistance to the Nicaraguan Opposition: Hearing Before the Subcomm. on Western Hemisphere Affairs of the House Comm. on Foreign Affairs*, 99th Cong., 1st Sess. 5 (1985) (statement by Elliott Abrams) [hereinafter *Review of President's Report*].

75. For a discussion of the role of the Catholic Church in the Nicaraguan conflict, see O'Brien, *God and Man in Nicaragua*, THE ATLANTIC, Aug., 1986, at 50.

government⁷⁶ and the Sandinistan repression of free speech.⁷⁷ The testimony of non-governmental human rights organizations ("NGOs") reflected a broader vision of human rights. NGO representative testified to Sandinistan human rights violations such as torture, cruel and degrading treatment, detainment in clandestine prisons, rape of women prisoners, denial of fair public trials and arbitrary interference with privacy.⁷⁸

While the Administration asserted that a concern for human rights was behind its request for aid, its reaction to accusations of Contra abuses was equivocal. When confronted with a 1985 report⁷⁹ documenting incidents of Contra abuses of Nicaraguan civilians, Assistant Secretary of State Abrams dismissed it as "unreliable," and "deliberately inaccurate."⁸⁰ When not doubting reports to the contrary, the Administration insisted that the Contras were acting in good faith to improve their rights record by establishing a human rights organization within the United Nicaraguan Opposition ("UNO").⁸¹ Much Senate testimony, however, contradicted the Administration's characterization of the Contras' human rights record.⁸² One published report recommended that Congress not approve further assistance to the Contras unless it was determined that consistent human rights violations ceased.⁸³ Neither position fully persuaded Congress; provisions of the Appropriations Act require the Administration to submit to Congress reports on Contra conduct.⁸⁴

76. See 132 CONG. REC. E2,235 (daily ed. June 24, 1986) (statement of Rep. Hamilton); see also *id.* at E2,240 (statement of Rep. Broomfield) (supporting President Reagan's reasons for aiding the Contras).

77. The President stated that the major Nicaraguan newspaper, *La Prensa*—"whose courage and determination had inspired so much of the Nicaraguan revolution—found its pages censored and suppressed." *Id.* at E2,240.

78. See 132 CONG. REC. S8,783-9 (daily ed. June 26, 1986) (Amnesty International Prepared Statement on Nicaragua).

79. See D. FOX & M. GLENNON, *ABUSES AGAINST CIVILIANS BY COUNTERREVOLUTIONARIES OPERATING IN NICARAGUA* (1985).

80. *Review of President's Report*, *supra* note 74, at 22 (statement of Elliot Abrams). Abrams continued: "The level of human rights abuses by the FDN [Nicaraguan Democratic Front] is open to doubt. The Sandinistas have made a big deal about it. Investigations like the Brody Report indicate a lot of that is lies. I don't think it is that big a problem." *Id.* at 34.

81. AMERICAS WATCH 1986, *supra* note 4, at 17. In 1985, at the urging of the Reagan Administration, UNO established a human rights office in Costa Rica that operated on United States funds. U.S. DEPARTMENT OF STATE, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1985*, at 635-36 (1986).

82. 132 CONG. REC. S8777 (daily ed. June 26, 1986) (statement of Sen. Harken: "The witnesses testifying at the . . . hearing were from organizations which represent the full range of views on this topic, and which provided an objective assessment of the human rights situation in Nicaragua."). For a complete list of the witnesses' credentials as given to the Senators, see *id.* at S8,778.

83. See FOX & GLENNON *supra* note 79, at 23 (accusing the Administration of hiding behind a "veil of intentional ignorance")

84. See, e.g., Military Construction Act *supra* note 1, § 204 (stating that no assistance

The Reagan Administration brought the subject of human rights into the debate over Contra aid, calling for military support for principles of "democracy and human rights."⁸⁵ While the Administration's characterization of human rights was not the same as that used by opponents of Contra aid, neither was it the sole conception of human rights which appeared in the text of the enacted bill. Opponents of the bill argued for rights to human integrity and against Contra abuses; the Administration spoke mainly of rights to vote, publish and pray. Congress responded with an Act which, to a certain extent, incorporates the two conceptions. It calls for military pressure for Nicaraguan political reform and sets up institutional and procedural controls over Contra actions regarding human rights. The result is an unusual hybrid—an Act which in one section gives weapons and in another appropriates \$3 million for human rights work. The Reagan Administration, in pushing for aid for the Contras, used the subject of human rights in a way calculated to promote a particular foreign policy objective, rather than in a way which seeks to promote human rights as an end.

Part I:

Suzanne B. Goldberg

Part II:

Lee Crawford

Kevin Reed

John Tennant

authorized by the Act "may be provided to any group that retains in its ranks any individual who has been found to engage in . . . gross violations of internationally recognized human rights . . ."). Section 211 (d) states that final installments of aid will be released only if the President determines that the Contras "have agreed to and are beginning to implement . . . the elimination of human rights abuses." Section 214(3) requires that Reagan submit a report to Congress which includes "a discussion of alleged human rights violations by the Nicaraguan democratic resistance and the Government of Nicaragua, including a statement of the steps taken by the Nicaraguan democratic resistance to remove from their ranks any individuals who have engaged in human rights abuses."

85. Ironically, on June 27, two days after the House passed the Contra aid bill, the International Court of Justice ruled that the United States had been violating a number of fundamental principles of international law by interfering in the internal affairs of Nicaragua. Specifically, the World Court ruled that the United States' concern for Nicaraguan human rights violations were not adequate to justify military intervention.

[W]hile the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect . . . [T]he protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the Contras.

U.S. v. Nicaragua, *supra* note 50, para. 268. For further discussion of the World Court judgment, see *Appraisals of the ICJ's Decision: Nicaragua v. United States (merits)*, 81 AM. J. INT'L L. 77, (H. Maier ed. 1987); Rowles, *supra* note 50.